

1-1 By: West S.B. No. 416  
1-2 (In the Senate - Filed January 29, 2015; February 4, 2015,  
1-3 read first time and referred to Committee on Criminal Justice;  
1-4 May 11, 2015, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 6, Nays 1; May 11, 2015,  
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10		X		
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 416 By: Whitmire

1-17 A BILL TO BE ENTITLED  
1-18 AN ACT

1-19 relating to criminal history record information that is subject to  
1-20 an order of nondisclosure and prohibiting a person's waiver of a  
1-21 right to an expunction or to an order of nondisclosure with respect  
1-22 to a criminal offense.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Article 55.01, Code of Criminal Procedure, is  
1-25 amended by adding Subsection (e) to read as follows:

1-26 (e) Notwithstanding Article 1.14(a), a person may not  
1-27 wave, as part of an agreement regarding the disposition of  
1-28 criminal charges based on the person's commission of an alleged  
1-29 offense, any right of the person to an expunction under this chapter  
1-30 that may exist in relation to the charged offense on or after the  
1-31 date the waiver is signed, unless the waiver is requested as a  
1-32 condition of the person's participation in a pretrial diversion  
1-33 program that could result in a dismissal of the charged offense. A  
1-34 waiver of a right to an expunction made in violation of this  
1-35 subsection is void.

1-36 SECTION 2. Section 411.081, Government Code, is amended by  
1-37 amending Subsection (d) and adding Subsection (j) to read as  
1-38 follows:

1-39 (d) Notwithstanding any other provision of this subchapter,  
1-40 if a person is placed on deferred adjudication community  
1-41 supervision under Section 5, Article 42.12, Code of Criminal  
1-42 Procedure, subsequently receives a discharge and dismissal under  
1-43 Section 5(c), Article 42.12, and satisfies the requirements of  
1-44 Subsection (e), the person may petition the court that placed the  
1-45 defendant on deferred adjudication for an order of nondisclosure  
1-46 under this subsection. Except as provided by Subsection (e), a  
1-47 person may petition the court for an order of nondisclosure  
1-48 regardless of whether the person has been previously placed on  
1-49 deferred adjudication community supervision for another  
1-50 offense. After notice to the state, an opportunity for a hearing,  
1-51 and a determination that the person is entitled to file the petition  
1-52 and issuance of the order is in the best interest of justice, the  
1-53 court shall issue an order prohibiting criminal justice agencies  
1-54 from disclosing to the public all criminal history record  
1-55 information related to the offense giving rise to the deferred  
1-56 adjudication, including information related to any other offense  
1-57 arising out of the same transaction as the offense for which the  
1-58 person was placed on deferred adjudication community supervision,  
1-59 if the other offense has not resulted in a final conviction and is  
1-60 no longer pending and if there was no court-ordered community

2-1 supervision under Article 42.12, Code of Criminal Procedure, for  
2-2 the other offense. A criminal justice agency may disclose criminal  
2-3 history record information that is the subject of the order only to  
2-4 other criminal justice agencies[7] for criminal justice or  
2-5 regulatory licensing purposes, an agency or entity listed in  
2-6 Subsection (i), or the person who is the subject of the order. A  
2-7 person may petition the court that placed the person on deferred  
2-8 adjudication for an order of nondisclosure only on or after:

2-9 (1) the discharge and dismissal, if the offense for  
2-10 which the person was placed on deferred adjudication was a  
2-11 misdemeanor other than a misdemeanor described by Subdivision (2);

2-12 (2) the second anniversary of the discharge and  
2-13 dismissal, if the offense for which the person was placed on  
2-14 deferred adjudication was a misdemeanor under Chapter 20, 21, 22,  
2-15 25, 42, or 46, Penal Code; or

2-16 (3) the fifth anniversary of the discharge and  
2-17 dismissal, if the offense for which the person was placed on  
2-18 deferred adjudication was a felony.

2-19 (j) Notwithstanding Article 1.14(a), Code of Criminal  
2-20 Procedure, a person may not waive, as part of an agreement regarding  
2-21 the disposition of criminal charges based on the person's  
2-22 commission of an alleged offense, any right of the person to an  
2-23 order of nondisclosure under this section that may exist in  
2-24 relation to that offense on or after the date the waiver is signed.  
2-25 A purported waiver of that right is void.

2-26 SECTION 3. (a) The changes in law made by this Act in  
2-27 adding Article 55.01(e), Code of Criminal Procedure, and Section  
2-28 411.081(j), Government Code, apply only to a waiver of a person's  
2-29 right to an expunction or an order of nondisclosure made on or after  
2-30 the effective date of this Act. A waiver made before the effective  
2-31 date of this Act is governed by the law in effect on the date the  
2-32 waiver was made, and the former law is continued in effect for that  
2-33 purpose.

2-34 (b) The change in law made by this Act in amending Section  
2-35 411.081(d), Government Code, applies to a person who petitions the  
2-36 court for an order of nondisclosure on or after September 1, 2015,  
2-37 regardless of whether the person is placed on deferred adjudication  
2-38 community supervision before, on, or after that date.

2-39 SECTION 4. This Act takes effect immediately if it receives  
2-40 a vote of two-thirds of all the members elected to each house, as  
2-41 provided by Section 39, Article III, Texas Constitution. If this  
2-42 Act does not receive the vote necessary for immediate effect, this  
2-43 Act takes effect September 1, 2015.

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